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SUBJECT: MALAWI: OPPOSITION BOYCOTTS PARLIAMENT

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11. (SBU) SUMMARY: The opposition Malawi Congress Party (MCP) and United Democratic Front (UDF) boycotted the opening of Malawi's National Assembly on April 28, refusing to attend the opening speech given by President Mutharika. The boycott continued on day two of the session, with only 10 of the 110 opposition MPs attending. At the beginning of both sittings, MCP Chief Whip Bester Majoni, speaking for the opposition, cited both the Constitution and the Standing Orders of the National Assembly when he argued the Assembly did not have a quorum and should be adjourned. Government argued that the doctrine of necessity, part of a 1995 court ruling that stated a boycott in the Assembly could not be used to block necessary business, should allow the Assembly to continue meeting. On April 30, while opposition party leaders held a joint press conference, the Speaker concurred with the government's argument and said doctrine of necessity did allow for the National Assembly to meet without a quorum in the event of a majority boycott. End Summary.

Session Opens to Half Empty House

12. (U) On April 28, President Mutharika arrived to a half-empty National Assembly to officially open the 40th session of parliament. Opposition MPs from the MCP, UDF, the Alliance for Democracy (AFORD), the Republican Party (RP), and several independents boycotted the sitting, leaving only six MPs on the opposition side of the house and 79 total in attendance. Before Mutharika arrived to give his speech, MCP Chief Whip Bester Majoni stated that the National Assembly did not have a quorum of 92 members present and requested that the legislature be adjourned. Speaker Louis Chimango denied the request and allowed the President to give his opening address.

Mutharika Calls for Putting National Interest Ahead of Politics

13. (U) Mutharika told those assembled that "working together in diversity" was the hallmark of a mature democracy and called on MPs to "represent their constituents and promote their interests." Mutharika continued to emphasize that parliament should put the needs of the country ahead of political squabbles, working through dialogue and not retribution. Mutharika called the past impasse in parliament a disgrace to the nation and defended his dismissal of parliament last September as a direct result of the acrimonious conduct during the impasse. Mutharika

highlighted five bills needed to approve loans for infrastructure investment projects as examples of national development measures that he expected parliament to pass in the session. Mutharika affirmed he was open to dialogue with the leaders of opposition parties if they were genuinely willing to seek mutual solutions in the national interest.

Boycott Continued to Second Sitting and Beyond

¶4. (SBU) On April 29, opposition MPs continued their boycott during the second sitting of the National Assembly, with only 10 opposition and 66 government MPs present out of the 183 members. Majoni again began the sitting by raising the issue that a quorum was not present, and that according to both the constitution and the standing orders of the National Assembly the sitting should be adjourned. After hearing an hour of debate on the subject, the Speaker allowed the sitting to continue, claiming he needed time to consult legal references on the matter. After the Speaker's decision to continue, Majoni and his MCP and UDF supporters left the National Assembly. On April 30, leaders of the MCP, UDF, and the Republican Party in the National Assembly called a press conference to explain their boycott, stating that the root issue was still the government's insistence to not allow implementation of Section 65. Republican Party MP Steven Malamba was the most outspoken, claiming that the opposition must hold the government accountable to prevent backsliding into dictatorship.

Opposition Points to the Constitution

¶5. (U) Majoni cited both Section 50 of the Malawi Constitution and Sections 26 and 27 of the Standing Orders of the National Assembly in making his argument that the lack of quorum required adjournment. Both provisions clearly state

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that if at least half plus one of the members of the Assembly excepting the person presiding are not present, then the Chair shall adjourn the Assembly without question until the next sitting day.

1995 Court Ruling Supports Government

¶6. (U) Government MPs nevertheless offered up several arguments to contest the matter, however. Government's main argument was based on the doctrine of necessity, which comes from a 1995 court ruling that challenged a bill passed in similar circumstances. In that case, the MCP boycotted the session when a government bill was being pressed through the Assembly to divest Dr. Banda and the former single party (the MCP) of control over Press Trust. In that ruling, the Supreme Court stated that the Constitution had purposefully allowed for a government to have a minority in the National Assembly, and that an opposition majority boycott to deny quorum in the Assembly could not be used to block necessary government business. During the second sitting, government MPs also brought up the issue of allowances, claiming that opposition MPs were still receiving their allowances and should either be counted toward quorum or else give back the money. Henry Chimunthu Banda, the leader of government in the National Assembly, further argued that since only debate was scheduled and not a vote, a call for a quorum was unnecessary. These arguments proved enough to sway the Speaker to review the issue further instead of adjourning, but Chimango also requested government and opposition leaders seek a negotiated solution.

¶7. (U) On April 30, at the start of the third sitting of the session, Chimango announced that government's argument of the doctrine of necessity was valid and that the National Assembly would continue to meet despite the opposition boycott. Ironically, Chimango was one of the named

plaintiffs in the Press Trust suit and at that time took the opposite position.

More of the Same

18. (SBU) Comment: The opposition vowed they would allow no legislative business before Section 65 when the President called for Parliament (reftel), and they have so far held true to their word. The circumstances regarding the current boycott likely differ enough from the 1995 Press Trust case that MCP and UDF can take the matter to court for a new legal interpretation. It remains to be seen whether the National Assembly will continue to sit and debate government business now that the Speaker has ruled on quorum, or if the GOM will use this new leverage to begin talks with the opposition. Some observers are asking whether bills to approve development loans that are passed during an opposition boycott would be recognized by organizations like the World Bank and African Development Bank. While the President's opening speech asked for dialogue, his previous comments indicate he is unlikely to compromise if it means allowing implementation of Section 65. Opposition leaders remain just as adamant about not compromising on the issue. Though some in the media and civil society understand and support the opposition's rule of law arguments, Mutharika is betting again that the vast majority of the population in Malawi is unlikely to support sacrificing or delaying development loans, infrastructure projects, and agricultural subsidies for Section 65. The Speaker's ruling on the "doctrine of necessity" strengthens the GOM's hand significantly -- essentially turning a minority government into a majority for the moment -- and may eventually force the opposition to modify its tactics.

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